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Counsel for *Defendant Facebook, Inc.*

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DAVID A. STEBBINS,

Plaintiff,

v.

KARL POLANO ET AL.,

Defendants.

Case No. 4:21-cv-04184-JSW

**FACEBOOK, INC.'S REPLY IN
FURTHER SUPPORT OF MOTION TO
VACATE ENTRY OF DEFAULT**

Ctrm.: A, 15th floor

Judge: Hon. Magistrate Judge Alex G. Tse

SAC Filed: September 17, 2021

Trial Date: Not Set

Defendant Facebook, Inc. ("Facebook"), by and through undersigned counsel, and pursuant to Rule 55 of the Federal Rules of Civil Procedure, hereby submits this reply in further support of its Motion to Vacate the Entry of Default [Dkt. 76]. In support hereof, Facebook states the following:

1. Plaintiff expounds at length as to why he believes default was properly entered. However, amidst his digressions he admits that he filed his Second Amended Complaint ("SAC")

1 *before* Facebook's deadline for responding to the First Amended Complaint (Response ¶3). He
2 also implicitly admits that he has not yet served the SAC on Facebook (Response ¶5).

3 2. In this circumstance, Rule 15(a)(3) of the Federal Rules of Civil Procedure makes
4 abundantly clear that Facebook's response to the operative complaint, which Facebook
5 understands to be the SAC, is due at the *later* of Facebook's time to respond to the original
6 pleading or within 14 days after service of the amended pleading. As such, Facebook has not
7 defaulted with respect to the SAC. In fact, Facebook's time to respond to the SAC has not even
8 begun to run in view of Plaintiff's failure to serve Facebook with that pleading.

9 3. Counsel for Facebook remains willing to accept service of the SAC and remains
10 willing to cooperate with Plaintiff to set a reasonable deadline for Facebook's response thereto. As
11 previously noted, Plaintiff has already agreed that defendant Alphabet, Inc.'s deadline to respond
12 to the operative complaint will be 15 days following the date on which the individual defendants,
13 at least two of whom appear to be based outside the United States, are served. Plaintiff cannot
14 articulate any possible prejudice in setting Facebook's response deadline on this same schedule.

15 Accordingly, Facebook respectfully requests that entry of default be vacated and that
16 Facebook's deadline to respond to the Second Amended Complaint (or the Third Amended
17 Complaint, should the Court authorize that amendment) be set for 15 days after all individual
18 defendants are served with the operative Complaint.

19 DATED: October 8, 2021

Respectfully submitted,

20 KILPATRICK TOWNSEND & STOCKTON LLP

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22 By: /s/ Joseph Petersen
23 JOSEPH PETERSEN

24 Counsel for Defendant
25 FACEBOOK, INC.
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